

FCC MAIL SECTION

Before the

Federal Communications Commission

MAY 24 3 38 PM '99 Washington, D.C. 20554

In the Matter of DISPATCHER BY

Amendment of Section 73.622(b),

Table of Allotments,

Digital Television Broadcast Stations.

(Salt Lake City, Ogden and Provo, Utah)

MM Docket No. 99-197

RM-9573

NOTICE OF PROPOSED RULE MAKING

Adopted: May 19, 1999

Released: May 21, 1999

Comment Date: July 12, 1999

Reply Comment Date: July 27, 1999

By the Chief, Video Services Division:

1. The Commission has before it a petition for rule making jointly filed by eight television stations in the Utah market, "DTV Utah"¹, requesting changes to the DTV Table of Allotments. Specifically, DTV Utah requests the substitution of Channel *44 for Channel *39 as the reserved NCE channel assigned to KBYU-TV, Provo; the substitution of Channel 46 for Channel 27 as the DTV channel assigned to KJZZ-TV, Salt Lake City; the substitution of Channel *36 for Channel *34 as the reserved NCE DTV channel assigned to KULC, Ogden; and the substitution of Channel 48 for Channel 17 as the DTV channel assigned to KUWB, Ogden.²

2. The eight DTV Utah stations propose to co-locate on a new tower adjacent to the current KSL-TV site at Farnsworth Peak. In order to facilitate this joint tower, a new channel allotment plan is proposed that consists of three interdependent components. The first component consists of the three stations, KSL-TV, KTVX and KUED, that do not require channel changes, but will have facilities or site changes. The second

¹ The licensees of these eight stations are: Brigham Young University, licensee of NCE station KBYU-TV, Provo; Larry H. Miller Communications Corporation, licensee of station KJZZ-TV, Salt Lake City; Bonneville Holding Company, licensee of station KSL-TV, Salt Lake City; United Television, Inc., licensee of station KTVX, Salt Lake City; University of Utah, licensee of NCE stations KUED, Salt Lake City and KULC, Ogden; KUTV Associates, licensee of station KUTV, Salt Lake City; and ACME Television Licenses of Utah, LLC, proposed licensee of station KUWB, Ogden.

² An application for assignment of license from Roberts Broadcasting of Salt Lake City, L.L.C. to Acme Television Licenses of Utah, L.L.C. (File No. BALCT-9904121A) was granted April 29, 1999.

component is a channel swap between stations KULC and KUTV. KULC is swapping its initial DTV allotment (Channel *34) for station KUTV's initial DTV allotment (Channel 35). The purpose of this channel swap is to permit KUTV to operate on Channel 34 and to permit KULC to participate in the third component of this proposal by exchanging its swapped channel (Channel *35) for Channel *36.³ The third component, involves four stations that require new DTV channels that are not currently allotted to the DTV Utah group and are the subject of this rule making. These four stations - KBYU-TV, KJZZ-TV, KULC, and KUWB - require DTV channel substitutions in order to accommodate the joint tower plan.

3. In support of its proposal, DTV Utah states that the proposed changes would permit the eight Utah stations to conduct their digital operations from a joint transmitting tower. DTV Utah asserts that the co-location of these stations would serve the public interest and facilitate the transition to DTV by reducing the transactional, construction and operating costs for all eight stations. Third, DTV Utah claims that its proposed changes are necessary to resolve potential interference problems and engineering obstacles that otherwise would preclude co-location of these eight stations. DTV Utah submits it has conducted a de minimis interference analysis for each of the proposed changes and has found that adoption of its proposal will not result in any new interference to the NTSC and DTV operations of other full power stations in the Utah market. DTV Utah also states that it has worked closely with the translator community to mitigate any adverse impact on this service from the DTV transition. In addition, DTV Utah has examined the impact of its proposal on the LPTV community, and is taking steps to ensure that any LPTVs that might be adversely impacted by these DTV allotment changes are reasonably accommodated.

4. We believe DTV Utah's proposal warrants consideration, since it could enable the above-noted broadcasters to share facilities, costs and equipment in converting to the DTV technology. Channels *36, *44, 46 and 48 can be substituted and allotted to Ogden, Provo, Salt Lake City, and Ogden, Utah, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (40-39-33 N and 112-12-07 W). In addition, we find that these channel changes are acceptable under the 2 percent criterion for de minimis impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623. As requested, we also propose to modify the authorizations of stations KULC, KBYU-TV, KJZZ-TV, KUWB to specify operation on the alternate DTV channels with the following specifications:

³ DTV Utah notes that the channel swap between KULC and KUTV is contingent upon the successful outcome of this proceeding. It states that if the Commission does not ultimately grant the new allotment plan requested herein, KULC and KUTV will retain the DTV allotments currently reflected in the DTV Table of Allotments.

State & City	DTV Channel	DTV power (kW)	Antenna HAAT (m)	DTV Service Pop. (thous.)
UT Provo	*44	403.0	1257	1389
UT Ogden	*36	304.0	1257	1393
UT Ogden	48	200.0	1257	1374
UT Salt Lake City	46	200.0	1267	1384

5. Accordingly, we seek comments on the proposed amendment of the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, for the communities listed below, to read as follows:

	<u>Channel No.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Ogden, Utah ⁴	29, *34	*36, 48
Provo, Utah	17c, *39	29, *44
Salt Lake City, Utah	27, 28, 35 38, 40, *42	28, 35, 38, 40, *42, 46

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before July 12, 1999, and reply comments on or before July 27, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

⁴ KUWB has agreed to swap its initial DTV allotment/assignment (Channel 29) for Channel 17, through a private contract pursuant to Section 73.623(f) of the Commission's Rules. On March 31, 1999, by action of Chief Television Branch, DTV Channels 17 at Provo and 29 at Ogden, Utah, were swapped via the application process. An Order to amend Section 73.622(b) of the Commission's Rules, the Table of DTV Allotments, to reflect this channel swap will be released at a future date.

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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an

ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, D.C.